

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

CC:PA:Br7:MEKeys  
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to: Julie A. Schneiberg, Policy Analyst, W&I/CARE/SPEC/Program Management

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Charles B. Christopher, Chief, Branch 7, Procedure & Administration

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from: A. M. Gulas, Senior Counsel   
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subject: SPEC Accuracy Measurement

In response to the questions you posed on December 19, 2007 concerning Stakeholder Partnerships, Education and Communication's (SPEC's) audit plan to measure the accuracy of the returns the Volunteer Income Tax Assistance (VITA) sites prepare, we answer as follows:

**1. What are the documentation requirements according to the internal audit controls of the federal government? Specifically, is SPEC required to retain copies of the tax returns that we sample during our quality review checks at VITA sites?**

We believe that this is a question best answered by GLS, Contract Branch. The intent of the evaluation is to determine if the VITA site is doing a good job, so in effect, if the review shows they are not, they are not awarded the contract for the following year. As such, GLS is best at determining what records the agency would need to keep in order for the agency to defend a challenge to the bidding and selection for the contract.

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**2. During SPEC's quality review checks of the VITA sites, is SPEC allowed to retain copies of the sampled returns, intake and interview sheets and source documents?**

Yes, SPEC may retain copies of sampled returns, intake and interview sheets and source documents so as to provide a sufficient audit trail for TIGTA to subsequently review SPEC's measurement results. However, any personal identifiers (name, address, SSN, dependent SSN information, etc.) must be redacted so as to protect the taxpayer's privacy interests.

Retention of the sampled returns, intake and interview sheets and source documents does not implicate the disclosure provisions of I.R.C. § 6103 since the returns at issue have not been filed with the Internal Revenue Service (IRS). As such, they do not constitute "returns" under section 6103(b)(1). Similarly, the sampled returns, intake and interview sheets and source documents are not "return information" as that term is defined by section 6103(b)(2). "Return information" is defined by section 6103(b)(2) as the taxpayer's identity, the nature, source or amount of his income, assets, or liabilities, whether or not the taxpayer's return is being or will be investigated, and any other data received by, recorded by, prepared by, furnished to or collected by the IRS with respect to a return or with respect to the determination of the existence (or possible existence) of liability of any person under the Internal Revenue Code. I.R.C. § 6103(b)(2). Inasmuch as the sampled returns are not being collected with respect to any taxpayer's potential liability under the code, such samples are not return information.

Moreover, because the sampled returns and other source documents would provide documentation necessary to support and evidence SPEC's quality review process, it is appropriate that the information be retained for quality control purposes as the Quality Site Review Sheets and Quality Return Review Sheets, standing alone, may not provide TIGTA with sufficient information to review SPEC's quality measurements. However, because the sampled returns and other source documents provided by the taxpayer contain the taxpayer's personal information, all personal identifiers must be redacted from any information retained for quality control purposes so as to protect the privacy interests of the taxpayers.

**3. If SPEC were to copy the returns, does this require notice be given to the taxpayer? Must the notice be in writing?**

Yes. SPEC should inform the taxpayer, in writing, that their returns and source documents (with personal identifiers redacted) may be copied and retained for quality control purposes.

**4. If a photo copier or scanner is not used, and only key data points from the returns/documents etc. were recorded instead, would this be considered the same as copying?**

No, as long as the information is amalgamated and no taxpayer can be identified. If only key data points were retained and those data points do not identify the taxpayer, that would not be the same as copying. Key data points used in conjunction with Form 6729C, *Quality Return Review Sheet*, might provide SPEC with information sufficient to evaluate the quality of the VITA or TCE site and the site's return preparers.

**5. If SPEC copies or in any way records the information on the returns, would this be considered a "system of records," thus requiring SPEC to go through the lengthy process of obtaining approval from Counsel?**

If SPEC copies or in any way records the information on the taxpayer's returns and that information is *redacted* so as to remove any personal identifiers, the information would not be retrievable by the taxpayer's name or other personal identifier; therefore, the information would not constitute a "system of records," as that term is defined in the Privacy Act (5 U.S.C. § 552a). According to the Office of Management and Budget (OMB), which has oversight authority for the Privacy Act (see 5 U.S.C. 552(a)(v)), a "system of records" is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some other identifying particular assigned to the individual, and the agency does, in fact, retrieve records about individuals by reference to some personal identifier. *OMB Privacy Act Implementation, Guidelines and Responsibilities*, 40 Fed. Reg. 28948, 28952 (July 9, 1975); see also *Department of Justice Freedom of Information Act Guide & Privacy Act Overview*, at 911 (2004) ("this technical definition of system of records is 'perhaps the single most important Privacy Act concept, because, with certain exceptions, it makes coverage under the Privacy Act dependent upon the method of retrieval of a record rather than its substantive content.'") The focus of the Privacy Act is on the actual practice of the agency, not on the capacity or capability of a computer program.

With respect to the SPEC quality review database, the identity of the taxpayer is not relevant since the information is only being retained and accessed for purposes of evaluating the VITA site and the VITA site's return preparers. Therefore, if the practice were such that personal identifiers were redacted from any retained information, the information would not be retrievable by the taxpayer's name or other personal identifier and would not constitute a system of records and would not require a Systems of Record Notice.

If you have any further questions or require additional information, please feel free to contact Mary Ellen Keys at 202-622-4066.